03:35:41рм 1	UNITED STATES DISTRICT COURT
2	WESTERN DISTRICT OF WASHINGTON IN TACOMA
3	
4	UNITED STATES OF AMERICA, )
5	) Plaintiff, ) No. CR08-5671BHS
6	vs. )
7	EZEKIEL HAMPTON, )
8	) Defendant. )
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10	REVOCATION OF SUPERVISED RELEASE HEARING
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13	BEFORE THE HONORABLE BENJAMIN H. SETTLE
14	UNITED STATES DISTRICT COURT JUDGE
15	
16	November 15, 2021
17	APPEARANCES:
18	Angelica Williams
19	Assistant United States Attorney Representing the Plaintiff
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21	Zenon Olbertz
22	Attorney at Law Representing the Defendant
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	Barry L. Fanning, RMR, CRR - Official Court Reporter———————————————————————————————————

03:35:42PM 1	THE CLERK: This is USA versus Ezekiel Hampton,
03:35:47PM 2	Cause No. CR08-5671BHS. Counsel, please make an
03:35:51PM 3	appearance for the record.
03:35:51PM 4	MS. WILLIAMS: Good afternoon, your Honor.
03:35:51PM 5	Angelica Williams for the United States.
03:35:54PM 6	MR. OLBERTZ: Good afternoon, your Honor. Zenon
03:35:56PM 7	Olbertz for Mr. Ezekiel Hampton.
03:35:59PM 8	THE COURT: Good afternoon. This matter was set
03:36:02PM 9	on a petition to revoke supervised release with a summons.
03:36:09РМ 10	The alleged violation is consuming marijuana on July 13th,
03:36:16рм 11	2021. What's the intention here of Mr. Hampton?
03:36:21РМ 12	MR. OLBERTZ: Your Honor, he is prepared to admit
03:36:24РМ 13	that violation. I guess he is prepared to admit that he
03:36:28РМ 14	did smoke marijuana on the day.
03:36:34РМ 15	THE COURT: All right. Before I inquire,
03:36:37РМ 16	Mr. Hampton, Mr. Bassett, this is a Class C violation?
03:36:44РМ 17	PROBATION OFFICER: That's correct, your Honor.
03:36:45РМ 18	THE COURT: And his criminal history category is?
03:36:49РМ 19	PROBATION OFFICER: A six. That would bring the
03:36:53РМ 20	guideline range from eight to fourteen months.
03:36:55РМ 21	THE COURT: Eight to fourteen?
03:36:56РМ 22	PROBATION OFFICER: Correct.
03:37:00РМ 23	THE COURT: All right. Mr. Hampton, you have a
03:37:05PM 24	right to deny this allegation, consuming marijuana on
03:37:09РМ 25	July 13th, 2021, and require the government to prove that,

03:37:13PM 1	if it can, at an evidentiary hearing.
03:37:15PM 2	Now, this hearing would be before me, not in front of
03:37:19PM 3	a jury. The burden of the government would be to prove by
03:37:23PM 4	a preponderance of the evidence, that means prove it is
03:37:25PM 5	more likely true than not true, that you committed the
03:37:28PM 6	violation. But you would be at the hearing, represented
03:37:32PM 7	by Mr. Olbertz. Are you satisfied with Mr. Olbertz's
03:37:36PM 8	services to you here?
03:37:37PM 9	THE DEFENDANT: Yes, I am.
03:37:38РМ 10	THE COURT: Have you been able to prepare for
03:37:40РМ 11	this hearing with him?
03:37:41РМ 12	THE DEFENDANT: Honestly, no.
03:37:44РМ 13	THE COURT: All right. Do you think you need
03:37:45PM 14	additional time in order to review with him, go over these
03:37:49РМ 15	things on this violation?
03:37:51PM 16	THE DEFENDANT: No, I don't.
03:37:53РМ 17	THE COURT: You wish to proceed here this
03:37:56РМ 18	afternoon?
03:37:56РМ 19	THE DEFENDANT: Yes, I do.
03:37:57РМ 20	THE COURT: All right. Again, you have this
03:38:04РМ 21	right to a hearing. At the hearing he is representing you
03:38:08PM 22	at no expense. You would have the right to call your own
03:38:11PM 23	witnesses at no expense. You have the right to testify at
03:38:14PM 24	the hearing. You have a right to choose to not testify.
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If you made that choice, it couldn't be used against you

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03:38:20PM 1	in determining whether you committed the violation. If
03:38:23PM 2	after exercising all of these rights the Court determined
03:38:26РМ З	you committed the violation, you would have the right to
03:38:28PM 4	appeal to a higher court to have it determine whether or
03:38:31PM 5	not all of your rights were provided.
03:38:33PM 6	Do you feel you understand your right to an
03:38:35PM 7	evidentiary hearing on this?
03:38:37PM 8	THE DEFENDANT: Yes, I do, your Honor.
03:38:38РМ 9	THE COURT: Are you then waiving your right to
03:38:40РМ 10	have an evidentiary hearing and wanting to admit this
03:38:43РМ 11	violation?
03:38:44РМ 12	THE DEFENDANT: Yes, your Honor.
03:38:47РМ 13	THE COURT: Has anyone made any promises or
03:38:49РМ 14	threats to you to get you to waive the hearing and admit?
03:38:53РМ 15	THE DEFENDANT: No, your Honor.
03:38:54РМ 16	THE COURT: I will ask you, do you admit or deny
03:38:56РМ 17	consuming marijuana on or before July 13th, 2021?
03:39:01рм 18	THE DEFENDANT: I admit it.
03:39:02рм 19	THE COURT: All right. Mr. Olbertz, do you know
03:39:05РМ 20	of any reason why the Court should find your client has
03:39:10РМ 21	knowingly, intelligently, and voluntarily waived his right
03:39:12РМ 22	to an evidentiary hearing and admitted to this violation?
03:39:16РМ 23	MR. OLBERTZ: No, your Honor. We had a
03:39:18РМ 24	discussion outside. I didn't find out about this hearing
03:39:23РМ 25	until late last week. And so we talked earlier today, but

this is a limited allegation that is pretty uncomplicated 03:39:29PM 1 in terms of the allegation itself. I think we have had 03:39:37PM 2 sufficient time to talk. I'm not aware of any other 03:39:42PM 3 03:39:45PM 4 issues that would require further discussion as to the issue of the violation itself. 03:39:53PM 5 THE COURT: All right. Then I will find, 03:39:56PM 03:40:04PM 7 Mr. Hampton, that you have waived knowingly, intelligently, and voluntarily your right to an 03:40:07PM 8 evidentiary hearing; and, similarly, admitted the 03:40:09PM 9 03:40:12PM 10 violation. 03:40:13PM 11 We are intending to proceed to disposition; is that 03:40:17PM 12 correct, Ms. Williams? 03:40:18PM 13 MS. WILLIAMS: Yes, your Honor. 03:40:19PM 14 THE COURT: What is the government's 03:40:20PM 15 recommendation here? 03:40:21PM 16 MS. WILLIAMS: Your Honor, the government joins 03:40:24PM 17 with Probation in recommending just a modification of the 03:40:27PM 18 terms of supervised release, specifically adding two First, the treatment -- a condition of drug 03:40:30PM 19 conditions. 03:40:34PM 20 treatment; and then, second, a condition of mental health 03:40:37PM 21 treatment. 03:40:39PM 22 In reviewing the allegations, it does seem like an 03:40:43PM 23 appropriate modification, but I will defer to Probation 03:40:46PM 24 for a more robust explanation for why those are

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recommended.

I would be happy to hear from 03:40:51PM 1 THE COURT: I didn't receive a written recommendation 03:40:53PM 2 Mr. Bassett. here prior to the hearing. Maybe I missed it. 03:40:55PM 3 03:41:04PM 4 PROBATION OFFICER: Good afternoon, your Honor. 03:41:06PM 5 Yes, that's correct, we are recommending two conditions be Mr. Hampton's judgment does not currently have the 03:41:09PM 6 added. 03:41:14PM drug testing and treatment conditions. So he submitted the three required drug tests. The first two were 03:41:17PM 8 negative, the third was positive for marijuana. 03:41:21PM 9 03:41:23PM 10 When I confronted him on it, he was honest about his 03:41:26PM 11 He said he was using for his mental health issues. 03:41:31PM 12 I encouraged him to seek mental health counseling. 03:41:34РМ 13 said he has done that in the past and did not find it as 03:41:36РМ 14 helpful as using marijuana for treatment. And so that is 03:41:40PM 15 why I am recommending the testing condition and the mental 03:41:43PM 16 health condition. 03:41:46PM 17 THE COURT: All right. Thank you. Mr. Olbertz. 03:41:54PM 18 MR. OLBERTZ: Your Honor, I think Mr. Hampton was 03:42:08PM 19 in this court a long time ago. He has spent half his life 03:42:17PM 20 And he -- I don't know if the Court recalls in prison. 03:42:25PM 21 or it had an opportunity to review the evaluations that we 03:42:28PM 22 had done back at the time of the sentencing? 03:42:36PM 23 THE COURT: I didn't. I went back and looked at 03:42:38PM 24 some of the documentation in the PSR, and the judgment, of

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course.

03:42:46PM 1 MR. OLBERTZ: The point was, and I think you 03:42:49PM 2 might remember this, he was on the streets at ten or eleven years old. That's the way -- the life he knows, or 03:42:54PM 3 03:42:59PM 4 he knew. 03:43:00PM 5 He went through -- he served the sentence that the Court ordered. He has been on probation for two years. 03:43:06PM 6 03:43:12PM 7 The only issue has been this issue. Noticeably, at the time of sentencing there wasn't 03:43:18PM 8 any testing -- or there wasn't any issue of substance 03:43:20PM 9 03:43:25PM 10 abuse, because he doesn't have a substance abuse history. 03:43:31PM 11 He doesn't have a substance abuse issue. 03:43:36РМ 12 He was applying and has been applying for Social 03:43:41PM 13 Security disability. He has been working at jobs that 03:43:43РМ 14 haven't lasted as long as he thought. In the meantime, he 03:43:47РМ 15 has been applying for Social Security disability as a 03:43:50PM 16 result of a PTSD diagnosis, and some other issues that 03:43:55PM 17 have also come up.

> Anyway, during this process he was -- he obtained some of his medical records and was required to provide those to an evaluator. And then he was required to see a physician, although that occurred over the internet because of the virus.

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In any event, he received a lot of information. of the documents that he received indicated for sleeping and PTSD marijuana was a substance that potentially could 03:44:39PM 1 03:44:42PM 2 03:44:46PM 3 03:44:53PM 4 03:44:57PM 5 03:45:01PM 6 03:45:04PM 7 03:45:07PM 8 03:45:13PM 9 03:45:17РМ 10 03:45:20PM 11 03:45:29PM 12 03:45:31PM 13 03:45:35PM 14 03:45:40РМ 15 03:45:50РМ 16 03:45:54PM 17 03:45:59РМ 18 03:46:01PM 19 03:46:07PM 20 03:46:11PM 21

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So that's when he decided he was going to get his help. marijuana card, his medical card. And he did that in June. And then he smoked marijuana.

As I say, he has had two drug tests that have been negative for everything. And then after he applied for Social -- for disability and started getting this information, this is when he decided he would try to see if that would help him.

There is nothing else in his bloodstream, as far as I know from Probation. They are only alleging this substance. So that's kind of the situation he's in.

I don't know if he was allowed -- I don't know whether he continued using it or not. He doesn't really know at this moment whether it really is helpful for him.

All of a sudden he is -- he needs to now start in a program for narcotic addiction, drug dependency or substance abuse. I don't think he has done any of those. He used it.

That's why I think this is kind of heavy handed at this moment in time when he has not been in any trouble. He is working. He is having a hard time mentally. And so this is one of the things he has tried.

"Yeah, go ahead, let's treat him for the time he smoked marijuana." He didn't need treatment back 13 years ago,

I guess I think it is just -- it is easy to say,

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whenever it was, and he doesn't need it at this moment now.

I just don't think that is -- I think he is doing fine, other than he is having some mental health issues.

I think that would be probably more helpful at this moment than to say, "You can't use marijuana." I think if he has mental health issues, then certainly evaluations and potential treatment in that regard would be appropriate.

You know, this marijuana is a difficult thing to discuss at this time between the states and the federal government. But I don't know that that means he -- I don't believe at this moment in time he is addicted or dependent on drugs.

So I don't know that -- I think that mental health treatment is the thing that he needs. I don't think that he needs treatment for a health issue he doesn't have at this point.

I guess that's -- I just -- You know, I think -The probation officer told him some judges aren't
directing testing for cannabis up in Seattle. That was
something that --

He's not livid about this whole thing. He is not upset or mad. He is trying to help himself, and this was one of the ways that he was trying to help himself.

Anyway, I don't think he needs that at this point in

I think he needs mental health treatment. 03:48:24PM 1 time. I think that would -- I don't think he has shown that he is 03:48:27PM 2 addicted or dependent upon drugs in any way. He never was 03:48:33PM 3 03:48:38PM 4 and he never will be at this point. Thank you. 03:48:42PM 5 THE COURT: Mr. Hampton, you have a right to address the Court before disposition here is determined. 03:48:44PM 6 03:48:48PM 7 It is not required, but you are welcome to. THE DEFENDANT: Your Honor, I think that --03:48:51PM 8 03:48:55PM 9 THE COURT: Would you stand? THE DEFENDANT: Sorry about that. 03:48:55PM 10 I think he expressed where I'm at. If I have to stop, I would pass 03:48:59РМ 11 03:49:06PM 12 with flying colors. I don't want to go back to prison. I thanked him. I stand here and thank you for saving my 03:49:10PM 13 I was looking at the rest of my life. I am glad to 03:49:13PM 14 03:49:16РМ 15 be free. 03:49:17PM 16 Whatever is expected of me, I will do it. I don't 03:49:20PM 17 have a drug problem, though. Sometimes I don't think I 03:49:23PM 18 have a mental problem. I think after everything I have 03:49:27PM 19 been through, I am excited to be a part of freedom. 03:49:32PM 20 Whatever the Court decides, I am willing to adhere to. 03:49:37PM 21 THE COURT: All right. Thank you. You may be 03:49:39PM 22 seated. 03:49:41PM 23 I am going to make it a condition of testing, not 03:49:44PM 24 treatment. This is a situation where you honestly

answered the question of the probation officer, if you had

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been consuming marijuana, and you self-reported in that.

You have indicated that you can follow the Court's direction. I am saying that I'm not going to -- I'm not following the course some colleagues I think have taken, which is, of course, having a more relaxed attitude about marijuana. You just have to put me in the camp of believing that the rule of law is -- It's a violation of federal law. I know it is legal in the state of Washington. But we can't -- I don't think it is good to go down the road of saying, "Well, it is okay for you to use marijuana because it is okay in Washington, and we think marijuana is not nearly as dangerous as these other Schedule 1 drugs."

I'm going to require you to follow the law and abstain from the use of marijuana. I'm not going to include alcohol in that, because there is no indication that alcohol is an issue here. You are to refrain from the use of marijuana and will be subject to random testing as directed by the Probation Office. Also to participate in a mental health treatment program, which I think can be beneficial for you.

MS. WILLIAMS: I don't believe we need a judgment since it is not a revocation.

THE COURT: It is a modification or change of conditions. Mr. Bassett can, consistent with the Court's

03:51:55рм 1	direction here, include that and submit it to the Court
03:51:58PM 2	for modification. We can follow that format.
03:52:03PM 3	PROBATION OFFICER: You would prefer to have it
03:52:04PM 4	submitted via 12(b) modification?
03:52:09РМ 5	THE COURT: What?
03:52:10PM 6	PROBATION OFFICER: A 12(b) modification at a
03:52:12РМ 7	later time or would you like to do that now on the record?
03:52:15PM 8	THE COURT: No, it can be done in the next day or
03:52:18PM 9	two. Just send it up with that modification, and the
03:52:21РМ 10	Court will approve it after Mr. Olbertz has had a chance
03:52:24РМ 11	to review it.
03:52:32РМ 12	You do have a right to appeal that decision. If you
03:52:36РМ 13	do, it will have to be within 14 days of entry of the
03:52:39РМ 14	modified condition.
03:52:42РМ 15	I think you are going to do fine. I think you want
03:52:46РМ 16	to have a productive life. I am trusting that this mental
03:52:54РМ 17	health counseling can help you in this plan. Of course,
03:52:58РМ 18	that's what the Probation Office is there for, to provide
03:53:01рм 19	resources, not to just be policing conduct. Is there
03:53:05РМ 20	anything else?
03:53:06рм 21	MS. WILLIAMS: Not from the government, your
03:53:08рм 22	Honor.
23	THE COURT: We will be at recess.
24	MR. OLBERTZ: Thank you, your Honor.
25	(Proceedings recessed.)

1	CERTIFICATE
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4	I, Barry Fanning, Official Court Reporter for the United
5	States District Court, Western District of Washington,
6	certify that the foregoing is a true and correct
7	transcript from the record of proceedings in the
8	above-entitled matter.
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12	/s/ Barry Fanning
13	Barry Fanning, Court Reporter
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